

## SB 212 : SMALL BUSINESS PROTECTION

**PREPARED FOR : THE SENATE COMMITTEE ON SMALL BUSINESS,  
EMERGENCY PREPAREDNESS, WORKFORCE DEVELOPMENT, TECHNICAL  
COLLEGES & CONSUMER PROTECTION**

Senate Bill 212 protects small businesses from hidden automatic renewal clauses in equipment and service contracts. This is an extremely important bill for the small businesses of our state. It is legislation that the small business owners in every legislative district understand. It will truly make a difference for small businesses throughout Wisconsin. Members of Wisconsin Independent Businesses are closely watching and anxiously waiting for legislative action.

This legislation evolved from innumerable calls to our WIB member **HOTLINE**. For 30 years WIB has had daily contact with scores of businesses throughout our state. WIB has heard complaints about automatic renewal clauses hidden in contracts. The contracts always involve providing services or leasing of business equipment.

Attorney Gary Antoniewicz, WIB's corporate counsel and a senior partner at The Boardman Law Firm, has long talked about the need to curb blatant abuses. SB 212 requires only that the equipment or service provider tell their customers that the automatic renewal clause is in the contract.

Big businesses using the automatic renewal technique include those selling credit card processing machines and credit card processing services, business uniform services, waste hauling and disposal companies, specialized computer equipment and software services, telephone system and telephone services, cash transaction machines (cash registers) and industry-specific diagnostic equipment.

We have heard some very difficult stories through the years about these contract clauses. Among the most often heard are :

*the contract of a credit card processing company is for 36 months (3 years) with automatic renewal for 2 year periods unless notice is given at least 90 days, but not more than 120 days, prior to expiration. This clause is buried in the contract in very fine print.*

*A waste hauler has a page #2 tiny print contract provision saying the 3 year contract "shall be automatically renewed for like terms thereafter unless either party shall give written notice of termination by certified mail to the other at least sixty days prior to the termination of the initial term or any renewal term."*

*Ford Dealer Computer Services contracts are for 120 months (10 years) with 120 month (10 years) extensions unless notice is given 180 days prior to expiration.*

(OVER, PLEASE)

Business owners must constantly track the expiration date of the contract and the period for giving notice. A small business that typically has up to 10 contracts on equipment and services finds it almost impossible to keep track of the agreements and notices that go with each contract. The out-of-state giants that use the hidden renewal clause tactic count on it being difficult, almost impossible, for a small Wisconsin business to know about the clause. Small businesses get trapped.

Contract dispute resolution is extremely difficult. For example, one credit card processing agreement calls for binding arbitration of any dispute. The arbitration takes place (by contract!) in Collin County, Texas.

Confusion caused by automatic renewal clauses can cause a small business to have simultaneous contracts with two companies for the same service because the small business bought a replacement contract believing that the original contract expired. And there is no escape from the multiple contracts!

This legislation has been opposed by big out-of-state firms with highly questionable business tactics and supported by your small businesses that are entrapped by those business tactics. Every day the legislature delays acting on this issue is another day for the giants to gouge your small businesses.

The significant majority of companies selling services and leasing products with automatic renewal clauses are headquartered outside the State of Wisconsin. Wisconsin small businesses are losing money because of this situation. This legislation will protect them from significant ongoing losses in the future.

13 states, including Wisconsin, have adopted or are considering some type of automatic renewal clause legislation. It is an issue whose time has arrived and Wisconsin business owners are looking for relief.

SB 212 is important small business legislation. The only opposition comes from companies that want to continue to use automatic renewal contract clauses to trap small firms. These big out-of-state companies don't care about Wisconsin and Wisconsin businesses. WIB believes this committee should care greatly about the small businesses in our state. A hidden automatic renewal clause is unfair to your local businesses. SB 212 will correct the problem. WIB hopes we will have your support.

**December 12, 2007**

***WIB : FOR 30 YEARS THE VOICE OF INDEPENDENT BUSINESS IN STATE GOVERNMENT***

SDR Transmissions  
Steven D. Rovik  
3625 Roosevelt Road  
Kenosha, WI 53142

Jim Kreuser  
State representative  
P.O. Box 8952  
Madison, WI 53708-8952

Fifteen years ago I had my first experience with automatic renewals, sometimes called an "Evergreen Clause." This experience was with a forty-eight month term lease agreement for electronic transmittal charge card equipment. This was also a mandatory automatic withdrawal for the monthly payments out of my checking account. The contract was sold and resold several times throughout this forty-eight month time period to several different lease companies. Towards the end of the lease, I was called by a representative to sell me new equipment. I told him since the cost for this equipment throughout this lease was approximately nineteen hundred dollars for four hundred dollars worth of equipment I was not interested in purchasing anything further and informed him that the lease was to be terminated at the expiration date. Following our conversation, I checked the expiration date of the lease and found that it had expired a couple of months earlier. Though the representative had to have known this, he did not have the courtesy to inform me of this. I contacted my bank and found it difficult to cancel the automatic withdrawal which was going on its third payment beyond the contracted expiration. After finding the correct person at the bank and proving the lease expiration date, they rebated two months worth of payments back into my account and cancelled the automatic withdrawal.

I had also contacted the company and told them I had spoken with someone from their company and informed them they were not courteous enough to tell me that the lease was expired at the time of their call. When I requested the buyout option of the equipment, I was denied. They refused to honor the initial terms and conditions that were explained to me by the original company salesman. They also told me that until I sent the equipment back at my expense (even though it was hand-delivered and set-up) I was to be billed until the equipment was returned. So I sent the equipment to them and would not pay them anymore money because I felt they owed me money since I overpaid for this equipment and was not entitled to a low cost buy-out, as I was previously led to believe. I purchased equipment from a different company at a more reasonable price.

When going for a loan years later, it was brought to my attention that an amount was owed of approximately three thousand dollars on my credit report from a collection agency. A few years later another notice for a large amount from the lease company was also on my credit report, which I thought was illegal due to the fact they had already hired a collection agency. Throughout this time, I was not approached by the collection company more than one time to give them my side of the story. I also called them directly and once again explained to no avail. After years I managed to finally erase these collections from my credit report.

I pride myself on always paying my debts in a timely manner and and worked very hard to maintain a high credit rating. It is a shame that there are companies out there who misuse legal loop holes and wreak havoc on honest, hardworking people.

I found myself paying very close attention to long-term rental or lease agreements from equipment and service companies with automatic renewal clauses. One reason being, if you receive poor service, they are time consuming and difficult to terminate. After the experience I have gone through, I feel companies should not be allowed to have fine print automatic renewal clauses in their contracts. Companies use this to intentionally deceive their customers, and these fine print sections of their contracts are seldom or never brought up during signing time.

I feel a company must notify its customers sixty days prior to expiration of contracts. If they are a reputable company and provided the service that was promised, they should be confident in a continued relationship. A company's tactics of hoping the customer will forget the expiration date and fail to have a written termination letter to them sixty to ninety days before hand, I feel is very unfair.

We as small business owners are busy enough keeping track of the day-to-day duties and deadlines, not to mention the endless stream of unexpected trials that arise every day. Remembering an exact expiration date three to five years down the road is difficult, if not impossible. Having already learned this valuable lesson the hard and expensive way, I am hoping something can be done so that others don't have to go through this.

Thank you for your time and consideration,

Steven D. Rovik  
Owner, SDR Transmissions Inc.

**SERVICE AGREEMENT  
NON-HAZARDOUS WASTES**

**-Waste Management - River Falls**  
Commercial/Refill Service  
250 Summit Street  
River Falls, WI 54022

THIS IS A LEGALLY BINDING CONTRACT, AND CONTRACTOR AGREES TO PROVIDE AND CUSTOMER AGREES TO ACCEPT THE SERVICES AND EQUIPMENT AT THE CHARGES AND FREQUENCY INDICATED ON THIS AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED ON THE REVERSE SIDE.

THIS IS A LEGALLY BINDING CONTRACT, AND CONTRACTOR AGREES TO PROVIDE AND CUSTOMER AGREES TO ACCEPT THE WORK DESCRIBED IN THE SCHEDULED WORK ORDER, AT THE CHARGES AND FREQUENCY INDICATED ON THIS AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREON.

NAME: Same

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

STREET NUMBER: \_\_\_\_\_ STREET NAME: \_\_\_\_\_ APARTMENT: \_\_\_\_\_

PHONE: \_\_\_\_\_

CONTACT: \_\_\_\_\_

MAJOR ACCOUNT: \_\_\_\_\_ RELATED ACCOUNT: \_\_\_\_\_

PURCHASE ORDER NUMBER: \_\_\_\_\_

SCHEDULE OF CHARGES		DESCRIPTION	DATE	RATE
850	1- 2yd Trunk 2x		X	80 <sup>00</sup>
858	1- 2yd R/c M-Paper/landboard 1x		X	26 <sup>00</sup>
857	1- 90 gallon 6-Ton 1x		X	18 <sup>00</sup>

3 A - 11 0700m by 6c 1x/cu

ADDITIONAL INSTRUCTIONS/COMMENTS:

Redise will probably be 1x/yr or less  
after 1-15-95

INCIDENTAL SPECIAL WASTE TYPES AND AMOUNTS

THE TERMS AND CONDITIONS ON REVERSE SIDE AND THE ATTACHED CONTRACTOR'S DEFINITION OF SPECIAL WASTE ARE PART OF THIS AGREEMENT.

CUSTOMER

AUTHORIZED SIGNATURE: Mary Bernd

PRINT NAME: MARY BERND

TITLE: Office manager

DATE: 12-20-94

CONTRACTOR

REPRESENTATIVE'S SIGNATURE: Harold Wilber

DATE REVIEW: \_\_\_\_\_

SALER DATE: 12-30

## TERMS AND CONDITIONS OF SERVICE AGREEMENT

**TERM.** Customer grants to Contractor the exclusive right to collect and dispose of all of Customer's waste materials as warranted herein (including recyclables) for an initial term of three years from the effective service date. The term of this Agreement shall be automatically renewed for like terms thereafter unless either party shall give written notice of termination by certified mail to the other at least sixty days prior to the termination of the initial term or any renewal term. In the event Customer terminates this Agreement or if then as provided above or Contractor terminates this Agreement for Customer's non-payment, Customer shall pay to Contractor as liquidated damages a sum calculated as follows: (1) if the remaining term under this Agreement is six or more months, Customer shall pay its most recent monthly charge multiplied by six; or (2) if the remaining term under this Agreement is less than six months, Customer shall pay its most recent monthly charge multiplied by the number of months remaining in the term.

**CHANGES AND COST INCREASES.** Because disposal and fuel costs are a significant portion of the cost of Contractor's services provided hereunder, Contractor may increase the Schedule of Charges proportionately to reflect any increase in such costs. The Schedule of Charges may also be adjusted from time to time to reflect increases in the Consumer Price Index. Subject to Customer's approval, the Schedule of Charges may be adjusted for reasons other than increases in disposal or fuel costs or the Consumer Price Index. Those changes in the Schedule of charges requiring Customer approval, and changes to the frequency of collection service or the amount, capacity and type of equipment used may be agreed to verbally, in writing or by the actions and practices of the parties. The parties may incorporate additional waste streams as a part of this Agreement so long as: (1) Customer has executed Generator's Waste Profile Sheet(s) with respect thereto; and (2) Contractor has approved, in writing, handling such waste streams of Customer. This Agreement shall not be affected by any changes in the Customer's Service Address if such new address is located within Contractor's service area.

**WASTE MATERIALS.** Customer warrants that the waste materials delivered to Contractor will not contain any hazardous, toxic or radioactive wastes or substances as defined by applicable federal, state, local or provincial laws or regulations. Customer acknowledges reading the attached "Contractor's Definition of Special Waste" (dated 02/92), and warrants that the waste materials delivered to Contractor will not contain any Special Waste, as so defined, unless and except (1) as specifically described in the "Generator's Waste Profile Sheet(s)" either attached hereto and made a part hereof or subsequently provided to and approved, in writing, by Contractor; or (2) incidental amounts of Special Waste, as listed by Customer in the "Incidental Special Waste Types and Amounts" section of this form. Contractor shall acquire title to the waste materials when loaded into Contractor's vehicles; provided, however, that title to and liability for the waste materials excluded from this Agreement shall remain with Customer, and Customer agrees to indemnify, defend and hold harmless Contractor against all claims, damages, suits, penalties, fines and liabilities arising out of the breach of the above warranties including, without limitation, liabilities for violation of laws or regulations, for injury or death to persons or for loss or damage to property or the environment.

**SPECIAL WASTE.** If this Agreement involves Contractor's furnishing of services and equipment for Special Waste, then the following additional terms and conditions shall apply:

Customer warrants that the Special Waste delivered to Contractor has the components and characteristics meeting the description contained in the Generator's Waste Profile Sheet(s).

In the event that such Customer's Special Waste is later determined, or defined to be a hazardous, toxic or radioactive waste or substance, or if the storage or disposal facility receiving such Special Waste from Contractor ceases operations or is later prohibited from receiving such waste, then the portion of this Agreement pertaining to such Special Waste may be immediately terminated by Contractor upon notice to Customer.

Customer agrees to comply with the precautions, conditions and limitations contained in Contractor's written notices of approval of such Special Waste.

If manifests or shipping papers are required by law to accompany the Special Waste to the storage or disposal facility, Customer is responsible for preparing all manifests or papers in form and number required by law.

**RESPONSIBILITY FOR EQUIPMENT.** The equipment furnished by Contractor hereunder shall remain the property of Contractor, and Customer shall have no interest in such equipment. Customer shall be responsible for all loss or damage to the equipment except for normal wear and tear or for loss or damage resulting from Contractor's handling of the equipment. Customer shall not overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. Customer agrees to indemnify, defend and hold harmless Contractor against all claims, damages, suits, penalties, fines and liabilities for injury or death to persons or loss or damage to property arising out of Customer's use, operation or possession of the equipment. On collection day, Customer shall provide unobstructed access to the equipment. If the equipment is inaccessible, Customer will be notified, and any additional collection service or attempt to provide such service shall be charged as an "extra pick-up."

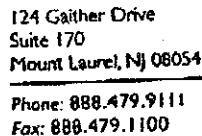
**CHARGES AND PAYMENT.** Customer shall pay Contractor for its services in accordance with the Schedule of Charges shown on the face of this Agreement. Where the Schedule of Charges specifically indicates "disposal" as a component of the charge, "disposal" shall mean the posted gate rate for disposal at the disposal facility utilized by Contractor plus an appropriate handling charge. Customer shall be liable for all taxes, fees or other charges imposed by federal, state, local or provincial laws and regulations upon the collection, transportation or disposal of Customer's waste materials or the services performed hereunder. Payment shall be made by Customer within ten days after receipt of an invoice from Contractor. In the event that any payment is not made when due, Contractor may terminate this Agreement on notice to Customer, recover any equipment on the premises of Customer and recover the liquidated damages described above. Contractor may impose and Customer agrees to pay a late fee for all past due payments not to exceed the maximum rate allowed by applicable law.

**RIGHT TO COMPETE.** Customer grants to Contractor the right to compete with any offer which Customer receives (or intends to make) relating to the provision of non-hazardous waste collection and disposal services upon the termination of this Agreement for any reason, and agrees to give Contractor written notice of any such offer and a reasonable opportunity to respond to it.

**PAVEMENT DAMAGE.** Contractor shall not be responsible for damage to Customer's pavement or other driving surface resulting from the weight of Contractor's vehicles.

**ATTORNEY'S FEES.** In the event of a breach of this Agreement, the breaching party shall pay all reasonable attorney's fees, collection fees and costs of the other party incident to any action brought to enforce this Agreement.

**MISCELLANEOUS.** If any conflicts exist in this Agreement between terms which are printed and those which are typed or written, the typed or written language shall govern. This Agreement shall be binding on the parties and their successors and assigns. The representations, warranties and indemnifications contained herein shall survive the termination of this Agreement.



Leasing Company ("Lessor," "We" or "Us"): Marlin Leasing Corp.

Leasing Customer (You) \_\_\_\_\_  
 Company Name (Exact business name): Platinum Home Services, INC.  
 Address: P.O. Box 1849 Woodruff VT 54568  
Street City Country State Zip  
 Phone: (215) 358-9771 Fax: (215) 358-9771 ☒ Corp. ☐ Limited Liability Corp. ☐ Partnership ☐ Prop.  
 Equipment Location: 616 Elm Street  
 Vendor: \_\_\_\_\_ Address: \_\_\_\_\_

Description of Leased Equipment		
PARASONIC COPIER (1812)	CONSOLE (DS12)	DOC FEEDER (A505)
LAEX M312913	LACLB 333838	GAUHA316725

<b>Payment Schedule:</b>		\$ 108.62	\$ 325.86	<input checked="" type="checkbox"/> Monthly
36	36	Amount of Each Payment	Security Deposit	<input type="checkbox"/> Quarterly
Lease Term (Mos.)	Total No. of Payments	(plus applicable taxes)		<input type="checkbox"/> Other

1. You (the customer) want to acquire the above equipment from the above vendor. You want us (the leasing company) to buy it and then lease it to you. The Lease will not begin until we sign it, and once it starts it will continue for the entire term stated above. You will pay us all charges stated above. If you pay late, there will be a late fee of \$20.00 or 15% of the late amount, whichever is more. We may charge you a partial payment to cover the time between delivery and the due date for the first regular payment. Within 15 days after the end of the Lease you must return the equipment to us, in good working condition, at your cost (unless we have given you a purchase option that you exercise). You agree to reimburse us for any cost we incur to refurbish returned equipment. If you do not return it within 15 days, the lease will automatically renew for another 12-month period under the same terms and conditions described in this Lease. To expedite the Lease, you have asked us to accept your faxed signature and have agreed this will be considered as good as your original signature and admissible in court as conclusive evidence of this Lease. You also agree to allow us to adjust the payment amount above if the final equipment cost varies from the amount the payment was based upon.

2. You alone selected the vendor and the equipment. You asked us to buy it. We are not related to the vendor and we cannot get a refund. Therefore the Lease cannot be canceled by you for any reason, even if the equipment fails or is damaged and it is not your fault. We are leasing it to you "as is" and we disclaim all warranties, express or implied. You are responsible for all service. The vendor or manufacturer may have given you warranties. You may contact them to get a statement of those warranties, if any. You promise that the equipment will be used only for business and not for personal, family or household purposes.

3. If you do not pay us as agreed, you agree that we may (i) repossess the equipment and/or (ii) directly debit (charge) your bank account(s) and/or sue you for all past due rent and other charges and for all rent due and future to the end of the Lease term. You must also pay our legal and other

costs. If we do not repossess, we may also directly debit and/or sue you for the "residual" (end of term) equipment value. This Lease will be governed by New Jersey law. You agree to be subject to suit in the New Jersey courts. We will have title to the equipment at all times. This is a "true lease" and not a loan or installment sale. You also agree this is a "finance lease" under Article 2A of the Uniform Commercial Code (UCC). If this is later determined not to be a "true lease," you grant us a security interest in the equipment. You give us power of attorney to file UCC financing statements at your cost.

4. You must pay for all sales, use, property and other taxes relating to your use or our ownership of the equipment. Unless we have given you a written option to buy the equipment at the end of the Lease for \$1.00, we will be entitled to all tax benefits (such as depreciation, tax credits, etc.). If you do anything to disallow our getting these benefits, you will promptly indemnify (pay) us an equivalent amount. You will also indemnify us for all liabilities and losses to us relating to your use of, or the ownership of, the equipment. This promise will continue even after the Lease has ended. You accept all risks of loss and damage to the equipment. You must keep it insured against all risks of loss in an amount equal to the replacement cost and will have us listed on the policy as the "loss payee." If you do not give us proof of this insurance, we may, at our option, charge you a risk fee or act if insured ourselves and charge you for the cost.

5. Because this Lease is based on your own credit rating, you may not assign (transfer) the Lease or your rights to anyone else. You may not sub-lease or rent the equipment to anyone. We may sell or transfer our interests to another person or company, who will then have all of our rights but none of our obligations. Those obligations will continue to be ours. The rights we pass on to the new person or company will not be subject to any defenses, claims or set-offs you may have against us.

**Acceptance of Lease Agreement** This is a binding contract. It cannot be cancelled. Read it carefully before signing, and call us if you have any questions.

X Scott D. Clarkson SCOTT D. CLARKSON President 3/23/01  
Signature of Lending Customer Print Name of Signer Title Date

<b>X</b>	<b>Accepted and Signed by MARLIN LEASING CORP.</b>	<b>Print Name of Signer</b>	<b>Title</b>	<b>Date</b>
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I/WE HEREBY PERSONALLY AND UNCONDITIONALLY GUARANTEE ALL AMOUNTS OWED BY THE LEASING CUSTOMER UNDER THIS LEASE. I AGREE THAT YOU MAY EXTEND, TRANSFER AND OTHERWISE AMEND THE LEASE AND I AGREE TO BE BOUND BY ALL SUCH CHANGES. I WAIVE NOTICE OF DEMAND AND DEFAULT. I AGREE THE LEASING COMPANY MAY PROCEED AGAINST ME SEPARATELY FROM THE LEASING CUSTOMER. I CONSENT TO SUIT IN NEW JERSEY COURTS.

Sirith R. Clarkson

GUARANTOR #1 (Print Name)

X Sirith R. Clarkson 2/23/01

Signature (Individually; No Titles) Date

Sirith R. Clarkson

GUARANTOR #2 (Print Name)

X \_\_\_\_\_

Signature (Individually; No Titles) Date

I AM AUTHORIZED TO SIGN THIS CERTIFICATE ON BEHALF OF THE LEASING CUSTOMER. I CERTIFY TO THE LEASING COMPANY THAT THE EQUIPMENT HAS BEEN DELIVERED AND IS FULLY INSTALLED AND WORKING PERFECTLY.

BEEN DELIVERED AND IS FULLY INSTALLED AND WORKING PERFECTLY.

X Scott R. Clark Scott R. Clark 2/26/01  
 Authorized Signature Name and Title (Please Print) Equipment Delivery Date



**B. Dealer On-Line Parts and Vehicle Locator Service Responsibilities.**

As a part of this Agreement, Dealer acknowledges and agrees to accept the following responsibilities:

1. Dealer is responsible for reporting all data circuit failures, as they occur, to FDCS. FDCS will coordinate all repairs to the data circuit with the applicable communications company.
2. Dealer will cooperate with FDCS as necessary in making tests to isolate any problems with the data circuit.

**C. Permission to Disclose Dealer Data.**

The very essence of the On-Line Parts and Vehicle Locator Service is the sharing of data regarding parts and vehicle inventories among the clients of FDCS. Dealer therefore authorizes FDCS to provide Dealer's parts and vehicle inventory data to all other clients of FDCS; however, Dealer acknowledges that only parts inventories of Ford and Lincoln/Mercury franchises controlled by the Parts Inventory Control Software of the FDCS In-Dealership Computer System can be accessed through the On-Line Parts Locator Service.

**D. Disclaimer of On-Line Parts and Vehicle Locator Service Warranties and Limitation of Liability.**

FDCS represents that so long as Dealer pays the charges stated in Schedule E for connection to the On-Line Parts and Vehicle Locator Service, FDCS will make every reasonable effort to provide access to the On-Line Parts and Vehicle Locator Service during the term of this Agreement. However, Dealer acknowledges and agrees that providing this Locator Service is an undertaking of the highest technical complexity. Dealer further acknowledges and agrees that in order for FDCS to provide this Locator Service, FDCS requires the services of other subcontractors, including Ford Motor Company and various communications companies, and the agreements that FDCS has with these subcontractors may not provide any recourse to FDCS in the event such subcontractor fails to perform as required.

**DEALER THEREFORE RELEASES FDCS FROM ANY LIABILITIES WHATSOEVER FOR FAILURE TO PROVIDE ACCESS TO THE ON-LINE PARTS AND VEHICLE LOCATOR SERVICE (DOWN-TIME), FOR ANY FAILURE BY THIRD PARTIES, OR FOR ANY OTHER REASON BEYOND FDCS' REASONABLE CONTROL.**

**EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE MADE BY FDCS WITH RESPECT TO THE ON-LINE PARTS AND VEHICLE LOCATOR SERVICE OR ANY OTHER SERVICES CONTEMPLATED HEREIN.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, FDCS SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO DEALER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, EVEN IF IT HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. DEALER'S SOLE AND EXCLUSIVE REMEDY HEREUNDER SHALL BE RESTORATION OF THE PARTS AND VEHICLE LOCATOR SERVICE.**

**SECTION 9. DISCOUNT.**

If Dealer purchases all printed forms and supplies (including stock paper, ribbons, print-wheels, etc.) that are used in conjunction with the FDCS In-Dealership Computer System from FDCS, and maintains all CRTs, printers, modems, personal computers, other peripheral equipment, CPUs, disk drives, tape drives, and power conditioners attached to the FDCS In-Dealership Computer System with FDCS, a discount as stipulated in Schedule C will be given on all Monthly Maintenance Charges for Equipment.

**SECTION 10. TERM AND EXTENSION OF AGREEMENT.**

→ The term of this Agreement shall be for one hundred twenty (120) months from the date when the computer system is operational ("Original Term"), such date to be conclusively designated by FDCS. Following the expiration of the Original Term, this Agreement shall automatically be extended for like periods ("Extension Term"), unless either party gives the other written notice to terminate one hundred eighty (180) days prior to the expiration of the Original Term or the then current Extension Term.

**Attachment 2**



## PROCESSING SERVICE AGREEMENT

AC0925

THIS AGREEMENT is effective this 24<sup>th</sup> day of February 1998 by and between ACCESS CASH INTERNATIONAL, INC., a Minnesota corporation, 4105 Lexington Avenue No., Arden Hills, MN 55126 (the "Company"), and Jor Gas Inc. (the "Merchant").

## RECITALS

Merchant owns or leases an automated teller machine ("ATM"). Company is in the business of providing processing services for ATMs. Merchant desires to engage Company to perform certain services as set forth herein.

NOW, THEREFORE, in consideration of the foregoing Recitals and of the covenants and agreements hereinafter contained, it is hereby agreed as follows:

1. **EQUIPMENT.** Merchant shall place a TRITON mini ATM MODEL 9500 on its premises in an indoor location mutually agreed upon and as identified in Exhibit 1 ("Premises").

2. **AVAILABILITY.** Merchant agrees that the ATM shall at all times remain available for use by Merchant's customers during Merchant's normal business hours for the term of this Agreement. However, Merchant shall make the ATM available during reasonable business hours so that Company may perform maintenance or system improvements. Generally, such maintenance should not exceed two (2%) percent of available time per calendar month.

3. **TRANSACTION PROCESSING FEES.** Company agrees to pay Merchant for each transaction made on the ATM. A "transaction" shall mean any cash withdrawal made from a cardholder's account. Company shall pay Merchant 2.25 per transaction. Payments for transactions will be disbursed monthly by Company to Merchant on or before the 15th of each calendar month following the calendar month in which the transactions occurred. In addition, Merchant shall pay a 3.00 monthly processor connection fee. Merchant authorizes Company to deduct such monthly connection fee. Merchant authorizes Company to deduct such monthly connection fee from the transaction fee payable hereunder. The transaction fee may be increased or decreased by Company upon at least 45 days prior written notice to Merchant provided such increase or decrease is directly related to a corresponding cost incurred by Company in providing such service.

4. **TRANSACTION SURCHARGES.** In the event Merchant is legally permitted and chooses to impose a surcharge upon each transaction, Merchant hereby authorizes Company to receive, from transaction proceeds processed, a fee equal to twenty (20%) percent of the gross monthly surcharges paid per month. Company agrees that the remaining surcharge revenues shall be remitted to Merchant at the time the transaction fees described in paragraph 3 are paid.

5. **PROCESSING SERVICES.** Company agrees to provide data processing services, through its agreement with Deluxe Data Systems, Inc. or such other processing service as Company, in its sole discretion, may select, to process authorized ATM transactions. Merchant agrees to select, to process authorized ATM transactions. Merchant agrees to accurately complete, or has accurately completed, the Access Cash Merchant Application, and has completed and delivered or shall complete and deliver such other documents as are reasonably required to facilitate the implementation and delivery of such processing services.

6. **INVENTORY REQUIREMENTS.** Merchant shall, at its cost and expense, inventory an adequate supply of paper and ribbons at Merchant's Premises, which are available from Company. Merchant shall keep sufficient amounts of cash in ATM at all times, for normal expected transaction usage.

7. **PHONE AND ELECTRICAL REQUIREMENTS.** Merchant shall, at its expense, contract for and provide a local dedicated business telephone line and one (1) dedicated operating electrical power outlet (110V), both within three (3) feet of the ATM site. Merchant shall pay for monthly charges incurred in connection with such telephone line and electrical power usage.

8. **EXCLUSIVITY.** Merchant shall not permit the installation of any other ATM on Merchant's Premises, nor permit the removal of the ATM from the Premises for the term of this Agreement, except as may be agreed by Company in writing or required by any lessor of the ATM.

9. **INSURANCE REQUIREMENTS.** Merchant agrees to protect the ATM from damage, loss, theft or destruction. Merchant shall provide and maintain property insurance against loss, theft, damage or destruction of the ATM in an amount not less than the full replacement value of the ATM. Merchant agrees it shall make no alteration nor addition to the ATM, and shall not permit anyone

other than authorized representatives of the Company, to perform any service or repair work on the ATM unless it receives Company's prior written authorization.

10. **TERM.** This Agreement shall be for a term of five (5) years from the date of installation, unless amended or terminated by written agreement signed by both Company and Merchant or terminated by Company pursuant to paragraph 13 below. Notwithstanding anything contained herein to the contrary, Company shall have the option, in its sole discretion, to extend this Agreement for additional periods of five (5) years each.

11. **WARRANTIES AND REPRESENTATIONS OF MERCHANT.** Merchant warrants and represents as follows:

a) It is the owner of the Premises or that it holds a lease or option to renew the lease for said Premises of equal or greater length than the initial five-year term of this Agreement.

b) It is engaged in a lawful business and is duly licensed under the laws of the State, County and City in which Merchant and the ATM is located, to conduct such business.

c) It has not been terminated from settlement or card transactions by any financial institution or determined to be in violation of MASTERCARD or VISA rules and regulations.

d) It has the authority to enter into this Agreement with Company and that the person(s) signing for or on behalf of Merchant are specifically authorized and directed to do so by Merchant.

12. **EQUIPMENT RELOCATION.** In the event Merchant transfers or moves its business from the Premises, Merchant shall notify Company not less than thirty (30) days prior to any such event. In such event, this Agreement shall be automatically deemed amended to apply to Merchant's new location for any remaining term(s) of this Agreement.

13. **TERMINATION.** This Agreement and all obligations of the Company hereunder may be cancelled by Company in the event of Merchant's default under the terms of any lease for the ATM or in any event if Merchant fails to comply with the terms of this Agreement. Merchant may terminate this Agreement prior to the end of the then current term, provided Merchant gives Company 180 days advanced notice and pays Company a cancellation fee as follows: 30% of the average monthly charges which have been billed or collected by Company during the six (6) months prior to termination times the months remaining in the then current term of this Agreement. Merchant hereby authorizes Company to collect the cancellation fee on the termination date by electronic fund transfer from Merchant's clearing account.

14. **ATTORNEYS' FEES.** If suit or action is instituted to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to costs, such sums as the court may adjudge reasonable for legal fees at trial and on any appeal therefrom.

15. **COMPANY NOT LESSOR'S AGENT.** Merchant understands and agrees that Company is not an agent of any lessor of the ATM, that it has no authority to act on behalf of or for any lessor, and that it is not authorized to waive or alter any term or condition of any lease for the ATM.

16. **COMPANY'S LIMITED LIABILITY TO MERCHANT.**

a) Company will use ordinary care in providing transaction processing services and will, at Company's expense, correct any errors that are due solely to Company's personnel. However, the expense of correcting such errors incurred by Company shall be the only responsibility of Company occasioned by its performance or non-performance of its obligations under this Agreement, and Merchant agrees to accept the correction of errors by Company as its sole and exclusive remedy. Merchant may not assert any claim against Company after one (1) year from the date that Merchant has or should have had knowledge of facts giving rise to such claim or any loss.

b) Company shall have no liability to third parties for any damages incurred by such third parties arising out of the performance or non-performance of services under this Agreement, and Merchant agrees to and hereby shall indemnify and hold Company harmless of, from and against any and all liability, claims, causes of actions or expenses relating thereto including Company's attorneys' fees in connection therewith.



shall not be presented until the goods are delivered or services performed.

#### 2.12 Mail Order

CMS and Bank caution against mail order or telephone order transactions or any other transaction where the Cardholder and Card are not or cannot, due to the high incidence of customer disputes. Merchant may solicit or accept mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("Mail/Telephone orders") only upon CMS' prior written authorization. Mail/Telephone orders completed without prior written consent of CMS or Bank will be a breach of this Agreement and cause for immediate termination in addition to any other remedies available under the Rules. Merchant may be required to use an address verification service ("AVS") on mail/telephone transactions. AVS is not a guarantee of payment and the use of AVS will not waive any provision of this Agreement or validate a fraudulent transaction. Merchant will obtain the expiration date of the Card for a mail/telephone order transaction. Merchant will obtain the signature of the Cardholder on the transaction. For mail/telephone orders or letters, telephonic orders or any other order, Merchant will obtain the signature of the Cardholder on the signature line of the Sales Draft the following applicable words or letters: telephone order or "TO"; or mail order or "MO".

#### 2.13 Future Delivery

Merchant will not present any Sales Draft to Bank or CMS for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without CMS' prior written authorization. If Bank or CMS have previously given such consent, Merchant represents and warrants to Bank and CMS that Merchant will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. Merchant will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from Sales Drafts or other memoranda taken in connection with future delivery transactions.

#### 2.14 Laws

Merchant will comply with all federal, state, and local laws, rules and regulations, as amended from time to time.

#### 3.0 Rights, Duties, and Responsibilities of Bank and CMS

##### 3.1 Deposits

(a) Merchant agrees that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 545, as amended from time to time. Subject to this Section, Bank will deposit to the Merchant Account all net funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide Merchant provisional credit for such funds (less recoupment of any credits), adjustments, fines, chargebacks or fees). If Bank or CMS reasonably believes that a chargeback or credit is likely with respect to any transaction or Sales Draft Bank and CMS have accepted, Bank and CMS may withhold payments due Merchant under this Agreement until such time that (i) Bank is charged back by the issuing bank (in such event, Bank shall retain the funds); by the period of time by which the Cardholder may dispute the Sales Draft and the issuing bank may exercise its chargeback rights has expired; and/or (ii) Bank and/or CMS determines that a chargeback on the Sales Draft will not occur. Merchant acknowledges that its obligation to CMS and Bank for all amounts owed under this Agreement arise out of the same transaction as Bank's obligation to deposit funds to the Merchant Account.

(b) Notwithstanding subsection (a) of this Section, under no circumstance will Bank or CMS be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Bank and CMS. All Sales Drafts and deposits are subject to audit and final checking by Bank and CMS, and may be adjusted for inaccuracies. Merchant acknowledges that all credits provided to Merchant are provisional and subject to chargebacks and adjustments in accordance with the Rules and this Agreement, whether or not a transaction is charged back by the Card issuer. Final credit for those conditional funds will be granted within CMS' and Bank's sole discretion.

(c) CMS or Bank may impose a cap on the volume and ticket amount of Sales Drafts that it will process for Merchant, as established by CMS or Bank. This limit may be changed by Bank or CMS from time to time. If Merchant exceeds the established limit, CMS or Bank may terminate this Agreement or suspend processing Sales Drafts, and either return all Sales Drafts evidencing funds over the cap to Merchant or hold these deposits in a separate Reserve Account. Merchant acknowledges that any monthly volume exceeding the established limit will cause the Merchant account to be placed in a Reserve Account. Merchant acknowledges that the possible interruption of service and/or the termination of funds and/or the funds into a Reserve Account may result in the possible interruption of service and/or the termination of funds and/or the funds into a Reserve Account. Merchant hereby acknowledges and holds Bank and CMS harmless for any loss or consequential damages sustained by Merchant as a result of delayed funds.

##### 3.2 Payments

Bank and CMS will accept for purchase all Sales Drafts deposited by Merchant that comply with the terms of this Agreement. Bank will pay to Merchant within 3 business days after the date the Bank receives each transaction, unless Merchant is otherwise informed by Bank or CMS, the total face amount of each Sales Draft, less any credit vouchers, discounts, fees or adjustments determined daily or monthly. All payments, credits and charges are subject to audit and final checking by Bank and CMS, and prompt adjustments may be made for inaccuracies discovered.

##### 3.3 Acceptance

Notwithstanding any other provision of this Agreement, Bank and CMS may refuse to accept any Sales Draft, or revoke its prior acceptance, in any of the following circumstances:

- The sale giving rise to such Sales Draft was not made in compliance with all the terms and conditions of this Agreement including Card Association's regulations, and applicable laws and regulations of any government authority; or
  - The Cardholder disputes his/her liability.
- In the event of a revocation of a prior acceptance of a Sales Draft, Bank may withdraw from the Merchant Account or Reserve Account any amount previously paid to Merchant for such Sales Draft.

##### 3.4 Customer Service

Bank and CMS will provide electronic draft capture and monthly activity statements, and will assign customer service phone numbers which will accept all customer service calls and other communications from Merchant relating to the services provided under this Agreement including, but not limited to, disbursement of funds, account charges, monthly statements and chargebacks.

##### 4.0 Account Monitoring

Merchant acknowledges that Bank and CMS will monitor Merchant's daily deposit activity. Merchant agrees that Bank and CMS may, upon reasonable grounds, divert the disbursement of Merchant's funds for any reasonable period of time deemed necessary to investigate suspicious or unusual deposit activity. Bank and CMS will make good faith efforts to notify Merchant of any such diversion. Bank and CMS may, either directly or indirectly, withhold funds which Merchant may attribute to any diversion of funds disbursement. Any funds diverted shall be deposited immediately into a non-interest bearing account at Bank, and not be released until such time that questionable/suspicious/fraudulent transactions have been resolved to the Bank's and CMS' satisfaction.

##### 5.0 Warranties

Merchant represents and warrants to Bank and CMS all of the following:

- That all representations and statements made by Merchant or on Merchant's behalf in the Merchant Processing Application, or in any other document relating to this Agreement, are true, accurate and complete in all material respects. Merchant hereby authorizes Bank and CMS to investigate and conduct such investigation as they deem necessary at any time by Merchant. Bank and CMS may use credit bureaus/reporting agencies and/or their own agents. Upon Merchant's request, Bank and/or CMS will provide Merchant with a copy of the results of such investigation.
- That Merchant is engaged in the lawful business shown on the Merchant Processing Application and is duly licensed to conduct such business under the laws of the state, county and city in which Merchant is located.
- That Merchant has not been terminated from settlement of Card transactions by any financial institution or determined to be in violation of any of the Rules of Visa or MasterCard except as specifically disclosed in the Merchant Processing Application.
- That Merchant has the authority to enter into this Agreement and that the person(s) signing for or on behalf of Merchant is/are specifically authorized and empowered to do so by Merchant and that the person(s) signing for or on behalf of Merchant is/are specifically authorized and empowered to do so by Merchant and that the person(s) signing for or on behalf of Merchant is/are specifically authorized and empowered to do so by Merchant and that the person(s) signing for or on behalf of Merchant is/are specifically authorized and empowered to do so by Merchant.
- That all of Merchant's sales locations, engage in the same or substantially similar business activity as that listed on the Merchant Processing Application.
- That each Sales Draft submitted hereunder represents the indebtedness of a Cardholder for whom Merchant has provided goods or services; shall not involve any element of credit for any other purposes; represents a transaction which was placed by the Cardholder or other authorized user of the Card and was not previously charged back or declined; and is not subject to any defense, dispute, offset or counterclaim which may be raised by a Cardholder. Further, Merchant warrants that any credit voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant.

##### 6.0 Limitation of Liability; Indemnification

Bank and CMS shall have no liability for any negligent design or manufacture of any point-of-sale terminal, printer, or other equipment used by Merchant for the acceptance of credit card transactions. NEITHER BANK NOR BANK MAKE ANY WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, CONCERNING ANY EQUIPMENT, OR OTHER SERVICE PROVIDED BY OTHERS AND IN PARTICULAR MAKES NO WARRANTIES OF MERCHANT ABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

##### 6.2 Indemnification

Merchant hereby indemnifies and holds Bank and CMS and each of them, their parent companies, affiliates and/or subsidiaries and all of its or their officers, agents and/or employees, harmless from and against any and all claims, losses, demands, actions, expenses, damages, liability, and/or costs of action, including (without limitation) attorneys' fees, other costs of defense and/or collection fees, which in any way result directly or indirectly from:

- Any breach of this Agreement or of any warranty or representation made to Bank or CMS by Merchant;
- Any damage or loss caused by negligence, fraud, dishonesty or willful behavior by Merchant or any of Merchant's employees, agents or other representatives; or
- Any contention, whether well-founded, baseless or otherwise, that Merchant violated the law or any MasterCard and/or Visa rule.

##### 6.3 Limitation of Liability

Bank and CMS will use due care in providing services covered by this Agreement and the performance of all services called for in this Agreement shall be consistent with industry standards. The extent of liability, if any, of Bank and CMS under this Agreement for any claims, costs, damages, losses and expenses for which it or they may be legally liable, whether arising in negligence or in contract, or otherwise, will not exceed aggregately the amount of fees paid by Merchant, less interchange and assessments, over the previous 12 month period, calculated from the date the liability accrued. In no event will Bank or CMS or their agents, officers, directors or employees be liable for indirect, special, or consequential damages.

##### 6.4 Display of Materials; Trademarks

Merchant will prominently display the promotional materials provided by CMS in its place of business, provided, that such displays are not required if Merchant is prohibited from doing so by government regulation or to the extent expressly exempted by MasterCard or Visa, as applicable. All promotional materials supplied to Merchant by CMS are the property of CMS and, upon termination of this Agreement, Merchant will return them to CMS. Merchant shall have the right to use and display the proprietary Visa and MasterCard names and symbols only while this Agreement is in effect or until Merchant is notified by Bank, CMS, Visa or MasterCard to cease such usage, whichever is earlier, and then only in compliance with applicable Visa and MasterCard Rules concerning such usage. Merchant shall have no right to use the proprietary name and/or symbol of Bank unless the materials containing such are provided to Merchant, and/or are approved in advance, by Bank. Merchant's use of Visa, MasterCard or other cards' promotional materials will not indicate, directly or indirectly, that Visa or MasterCard endorse any goods or services other than their own and Merchant may not refer to Visa or MasterCard in stating eligibility for its products or services. Nothing herein is intended to restrict Merchant from honoring other credit cards or from entering into any other transaction with a purchaser. Merchant may display and advertise any other credit card or credit plan, provided, however, that Merchant shall be maintained between the MasterCard and Visa symbols and any local/regional acceptance mark also displayed. In no event will Merchant advertise or display any promotional material containing the name or symbol of Bank, Visa or MasterCard which states or implies that only Cards issued by Bank will be honored by Merchant.

##### 6.5 Term; Termination

1.1 Term  
This Agreement shall become effective upon acceptance by Bank and CMS and shall continue in full force and effect for a term of thirty-six (36) months. Merchant shall auto renew for successive two (2) year terms thereafter unless written notice of non-renewal by the party desiring not to renew is delivered to the other parties hereto at least ninety (90) days, but no more than one hundred twenty (120) days prior to the expiration of the initial or any renewal term.

##### 1.2 Termination

CMS or Bank may terminate this Agreement immediately at any time with or without cause upon providing Merchant with written notice of such termination. Merchant may terminate this Agreement upon 30 days prior written notice to CMS and Bank and payment of the termination fee (except as set forth in the Summary of Fees) and any other amounts due hereunder.

##### 8.3 Action Upon Termination

In the event of termination of this Agreement for any reason, Merchant authorizes Bank to collect and discontinue its disbursement of all funds evidenced by Sales Drafts and other payment transactions in process. Collected funds may be placed in the Reserve Account (defined below) until Merchant pays any outstanding charges or losses.

(a) Merchant hereby authorizes Bank, upon termination of this Agreement or at any time upon Bank's and CMS' request an within Bank's and CMS' sole discretion, to establish and maintain a deposit account ("Reserve Account") at Bank in an amount reasonably determined by Bank and CMS to be appropriate to protect Bank's and CMS' interests under this Agreement.

(b) Bank and CMS are authorized to debit the Merchant Account from time to time to establish or maintain funds in the Reserve Account, with or without prior notice to Merchant. Bank and CMS may deposit into the Reserve Account funds it would otherwise be obligated to pay Merchant, for the purpose of establishing or maintaining the Reserve Account in accordance with this section if it determines such action is appropriate to protect its interest. Bank's and CMS' right to sums owed them by Merchant pursuant to this Agreement shall in no way be limited by the balance or existence of the Reserve Account. Bank's and CMS' rights will respect to the Reserve Account, including their security interest therein, shall survive the termination of this Agreement. Bank may charge Merchant a monthly fee for maintenance of said Reserve Account, if established.

(c) Bank may, without notice or demand to Merchant, apply deposits in the Reserve Account against any outstanding amount Merchant owes under this Agreement or any other Agreement between Merchant and Bank/CMS. Also, Bank and CMS may exercise their rights under this Agreement to collect any amounts due to Bank and CMS including, without limitation, rights to set-off and recoupment.

(d) In no event will Merchant be entitled to a release of Reserve Account funds before 270 days following the effective date of termination of this Agreement, provided however, that the release of such funds to Merchant shall not relieve Merchant of any liability to CMS or Bank accruing either before or after such release. Bank will have sole control of the Reserve Account. Merchant further acknowledges and agrees that CMS has the right to hold funds of Merchant to cover all liabilities of Merchant to CMS.

##### 8.4 Rights

The rights conferred upon Bank and CMS in this Agreement are not intended to be exclusive of each other or of any other right and remedies of Bank and CMS under this Agreement, at law or in equity. Rather, each and every right of Bank and CMS at law or in equity will be cumulative and concurrent and in addition to every other right.

##### 8.5 Terminated Merchant File

If this Agreement is terminated for cause, Merchant acknowledges that Bank and CMS may be required to report Merchant business name and the names and other identification of its principals to the Combined Terminated Merchant File (CTMF) maintained by Visa and MasterCard. Merchant shall hold harmless Bank and CMS for claims which Merchant may raise as result of such reporting.

##### 8.6 Submitted Sales Drafts

Notwithstanding any termination of this Agreement, this Agreement shall remain in full force and effect with respect to any Sale Draft which is actually delivered to Bank or CMS by Merchant and not returned to Merchant prior to Bank's extending credit therefor.

##### 9.0 Notices

All notices under this Agreement shall be deemed delivered when mailed, postage prepaid, addressed as follows:

<b>CMS/CERTIFIED MERCHANT SERVICES</b> P.O. Box 260077 Piano, TX 75026-0077 <b>NATIONAL CITY BANK OF KENTUCKY</b> 1231 Dumett Lane Louisville, KY 40218-2008	<b>HUMBOLDT BANK</b> P.O. Box 1479 Eureka, CA 95502-1007 <b>WOODFORD NATIONAL BANK</b> P.O. Box 219320 Houston, TX 77218
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(b) If to Merchant, to any owner or officer stated on the Merchant Processing Application at the Merchant's place of business as also stated on the Merchant Processing Application.

Notice may be sent by facsimile or other electronic means of communication, but, if such transmitted notice is by Merchant 1 Bank and/or CMS, the original of any such communication shall also be mailed to the intended recipient on the date of the electronic transmission and it shall not be deemed served on the receiving party until the mailed copy is received and confirms by that party. If Bank or CMS gives notice by facsimile or other electronic communication to Merchant, service is deemed to have been given on the day of such transmission (with confirmed receipt).

##### 10.0 Additional Terms

###### 10.1 Audits

Representatives of Bank and CMS may, during the normal business hours, inspect, audit and make records of Merchant's books accounts, records and files pertaining to any Card transactions. Merchant will preserve its records of any Card sale and an refund or credit adjustment thereon for at least 7 years from the date of such sale, credit, refund or adjustment.

###### 10.2 Confidentiality

Merchant will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Bank and CMS (including without limitation the terms of this Agreement and will safeguard such information and data by using at least the same degree of care that Merchant uses to protect its own confidential information.

###### 10.3 Force Majeure

Bank and CMS shall not be liable for any damages resulting from any performance or non-performance caused by circumstance beyond Bank's and/or CMS' control including, but not limited to, Acts of God, fire, flood, war, government action, labor trouble or shortage, or other events of similar effect in connection with Bank's and CMS' obligations herein.

###### 10.4 Amendments

Bank and CMS may propose amendments or additions to this Agreement. Bank and CMS may inform Merchant of a proposed change in a periodic statement or other written notice. Merchant will be deemed to have agreed to the change if it continues to present transactions to Bank and CMS after 14 days from the date notice of the proposed change was sent. If Merchant does not agree with a proposed change, it may terminate this Agreement by notifying CMS in writing within 14 days of the mailing of the notice of proposed amendment. Notwithstanding the previous sentence, CMS is entitled to increase any fee due to it imposed by Visa, MasterCard, or telecommunication vendors without giving Merchant the right to terminate this Agreement.

###### 10.5 Construction

All section headings are for descriptive purposes only, and the language of such section shall control.

###### 10.6 Assignment

This Agreement may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Bank or CMS. Bank and/or CMS may assign this Agreement at any time upon written notice to Merchant.

###### 10.7 Merchant's Fees

Merchant shall be liable for and shall indemnify Bank and CMS for any and all attorney's fees and other costs (including collection costs) and expenses paid or incurred by the Bank and/or CMS or resulting from any breach by Merchant of this Agreement.

###### 10.8 Governing Law, Venue

Any action or proceeding arising out of this Agreement by or against Bank or CMS shall be initiated and maintained under the jurisdiction of the state of Texas with venue in the county of Collin County. This Agreement shall be construed and governed by the laws of the state of Texas. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in effect.

###### 10.9 Dispute Resolution

Any dispute arising under this Agreement, shall be promptly submitted to binding arbitration in accordance with the rules of the American Arbitration Association in Collin County, Texas and in accordance with the corresponding laws concerning arbitration under Texas law, and judgment upon the award rendered by the arbitrator may be entered and enforced in any court of competent jurisdiction thereof. The arbitrator shall have the right to render equitable, as well as other, awards and relief. Without limiting the foregoing, any party submitting such dispute shall request the American Arbitration Association to: (a) appoint a single arbitrator who is experienced and knowledgeable in the field of industry relating to the subject matter of this Agreement; (b) require all testimony to be transcripted; and (c) require any award or decision to be accompanied by findings of fact and a statement of reason for such award or decision.

###### 10.10 Waiver

Neither the failure nor any delay on the part of Bank or CMS to exercise any right, remedy, power or privilege hereunder shall operate as a waiver or give rise to an estoppel nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

###### 10.11 Survival

Each and every indemnity provided for in this Agreement shall survive the termination of this Agreement. Further, Sections 2.6, 2.7, 2.8, 3.3, and all provisions of Section 5.0 and 6.0 shall survive termination of this Agreement.

###### 10.12 Cooperation

Merchant agrees to execute, file and record such statements, notices and certificates as Bank or CMS may reasonably require to preserve and protect Bank's and/or CMS' interests.

###### 10.13 Entire Agreement

This Agreement and all other documents executed or submitted by Merchant in connection herewith, or incorporated herein by reference, constitute the entire agreement between Merchant, on the one hand, and CMS and Bank on the other.

###### 11.0 Fees

###### 11.1 Merchant Fees

Merchant will pay Bank and CMS fees for services, forms and equipment in accordance with the rates set forth on the Merchant Processing Application. Such fees will be calculated and debited from the Merchant Account once each business day or month as determined by CMS, for the previous business day's or month's activity, or will be netted out from the funds due Merchant under this Agreement. CMS may adjust the fees as set forth in Section 10.4. Merchant agrees that all fees and charges are considered accurate and final unless Merchant disputes them in accordance with the provisions of Section 2.7(c). Furthermore Merchant understands that every credit voucher issued will be subject to a transaction fee and there will be no refund of any fee or charges associated with the original transaction.

###### 11.2 Other Amounts Owed

Merchant will immediately pay CMS or Bank any amount incurred by CMS or Bank attributable to this Agreement, including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient funds fees, and ACH debits that overdraw the Merchant Account, Reserve Account, or any other account Merchant maintains at Bank or at any other financial institution for any amount Merchant owes CMS or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between Merchant and CMS or Bank, whether the obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event any such ACH does not fully reimburse CMS or Bank for the amount owed, Merchant will immediately pay CMS or Bank such amount.

###### 11.3 Debits

Merchant authorizes Bank and CMS to debit from the Merchant Account any amounts paid by Bank or CMS to a leasing company on Merchant's behalf, including but not limited to monthly lease payments or other amounts owed by Merchant to the leasing company.

###### 11.4 Taxes

Merchant shall timely pay all taxes and other charges imposed by any governmental authority on the services provided under this Agreement.

###### 11.5 Prior Processor Termination Fee Refund

If Merchant incurs a fee for canceling Merchant's immediately preceding credit card processing agreement in order to sign this Agreement, CMS may, at its sole and exclusive discretion, either reimburse Merchant for such fee up to but not exceeding \$250 via credits posted to their account or cancel the processing agreement with CMS and allow Merchant to transfer back to the previous service provider. Any such reimbursement by CMS will occur after 60 days after the MID issued date, provided that Merchant has given CMS a bank statement evidencing the cancellation fee within 60 days after the MID issued date and Merchant is processing with CMS at the time of the reimbursement.





Waste Management  
1888 Commercial Way  
PO Box 12560  
Green Bay, WI 54307  
Phone 920-468-5000  
800-621-8884  
Fax 920-406-3023

**Commercial  
SERVICE AGREEMENT  
NON-HAZARDOUS WASTES**

10108006

SIC Code \_\_\_\_\_  
Type of Business \_\_\_\_\_

WM AGREEMENT # \_\_\_\_\_  
CUSTOMER ACCT # \_\_\_\_\_  
ACCT. NAME \_\_\_\_\_  
SERV. ADDRESS \_\_\_\_\_  
CITY, STATE, ZIP \_\_\_\_\_  
COUNTY/PARISH \_\_\_\_\_  
TEL# \_\_\_\_\_ FAX \_\_\_\_\_  
CONTACT \_\_\_\_\_  
E-MAIL \_\_\_\_\_

VCR CODE \_\_\_\_\_  
EFFECTIVE DATE \_\_\_\_\_  
BILL. NAME \_\_\_\_\_  
BILL. ADDRESS \_\_\_\_\_  
CITY, ST, ZIP \_\_\_\_\_  
COUNTY/PARISH \_\_\_\_\_  
TEL# \_\_\_\_\_ FAX \_\_\_\_\_  
CONTACT \_\_\_\_\_  
E-MAIL \_\_\_\_\_

**EQUIPMENT/SERVICE SPECIFICATIONS -**

NEW Loc.	Sys	Qty	Size	Lids	Whls	Lock	Freq	OC	Schedule & Route #							Charge(s)*	
									M	T	W	T	F	S	S		
																\$	/mth.
																\$	/mth.
																\$	/mth.
																\$	/mth.

Enter Map Code/Driver Notes/Cross Roads/Container Description Here

Total \$ /mth.

OLD Loc.	Sys	Qty	Size	Lids	Whls	Lock	Freq	OC	Schedule & Route #							Charge(s)*	
									M	T	W	T	F	S	S		
																\$	/mth.
																\$	/mth.
																\$	/mth.
																\$	/mth.

Wisconsin Generator Tax will be added, where applicable.  
Add Special Instructions and Set Up Comments ↓

\* A fuel surcharge and environmental compliance cost recovery charge, calculated as a percentage of the Charge(s), will be included on your invoice. Information about the Fuel/Environmental Charge can be found on our website at [www.wm.com](http://www.wm.com).

Total \$ /mth.

Net Change \$ /mth.

Enter Special Instructions Here

CUSTOMER DEPOSIT		
P.O. NUMBER		
JOB NUMBER		
RECEIPT REQUIRED?	No (Yes/No)	BILL TO ACCT #
TAXABLE	No (Yes/No)	DISPOSAL SITE

THE UNDERSIGNED INDIVIDUAL SIGNING THIS AGREEMENT ON BEHALF OF CUSTOMER ACKNOWLEDGES THAT HE/SHE HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT, ON THE REVERSE SIDE, AND THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF THE CUSTOMER. WISCONSIN RECYCLING REQUIREMENT. State and local law requires that you recycle certain materials in the State of Wisconsin.

**--TERMS: DUE UPON RECEIPT--**

CUSTOMER	
AUTHORIZED SIGNATURE	
TITLE	DATE
NAME (PRINT OR TYPE)	
COMPANY	
AUTHORIZED SIGNATURE	
TERRITORY #	DATE

SCHEDULE OF CHARGES*	
Container Usage Fee	\$
Locks	\$ 12.00 / month
Overage Charge	\$ 13.00 / yard, min 2 yd charge
Extra Pickup Charges*****	
Per Lift	\$
Per Yard	\$
Delivery Charge	\$ 75.00
Container Exchange Charge	\$100.00
Trip Charge (Unable to Service)	\$ 25.00
Removal Fee	\$150.00
Customer Service Assisted Payment Charge	\$ 8.00
Lock Installation Fee (one time charge)	\$
Re-Activation Fee	\$
Set Up Fee	\$
Trip Charge (Return to Service)	\$
*75% of Monthly Recurring Revenue	
Total Charge	\$



## SERVICE AGREEMENT NON-HAZARDOUS WASTES

### Collection Service Agreement Terms and Conditions

1. **SERVICES RENDERED; WASTE MATERIALS.** Customer grants to Company the exclusive right, and Company shall furnish equipment and services, to collect and dispose of and/or recycle all of Customer's Waste Materials. Customer represents and warrants that the materials to be collected under this Agreement shall be only "Waste Materials" as defined herein. For purposes of this Agreement, "Waste Materials" means all non-hazardous putrescible and non-putrescible solid waste and recyclable materials generated by Customer or at Customer's Service Address. Waste Materials includes Special Waste, such as industrial process wastes, asbestos containing material, petroleum contaminated soils, treated/de-characterized wastes, and demolition debris, provided that Customer has completed a Waste Profile for such Special Waste which has been approved by Company in writing. Waste Materials specifically excludes, and Customer agrees not to deposit or permit the deposit for collection of, any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, biohazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or Special Waste not approved in writing by Company (collectively, "Excluded Materials"). Title to and liability for Excluded Material shall remain with Customer at all times.

2. **TERM.** The initial term ("Term") of this Agreement is thirty-six (36) months from the Effective Date set forth above ("Initial Term"). This Agreement shall automatically renew thereafter for additional terms of thirty-six (36) months each ("Renewal Term") unless either party gives to the other party written notice (See Section 10) of termination at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the termination of the then-existing term.

3. **SERVICES GUARANTY.** If the Company fails to perform the services described within five business days of its receipt of a written demand from Customer (See Section 10), Customer may terminate this Agreement with the payment of all monies due through the termination date.

4. **CHARGES; PAYMENTS; ADJUSTMENTS.** Upon receipt of the invoice, Customer shall pay for the services and/or equipment (including repair and maintenance) furnished by Company in accordance with the charges on the reverse side, or as adjusted over the term of the contract as noted herein. Company reserves the right to charge a late fee no greater than that allowed by law on balances not paid within thirty (30) days of the date of the invoice. Company may increase the charges to address any increase in or to recoup all or any portion of, fuel or environmental compliance costs; to address any change in the composition of the Waste Materials or increases in the average weight per container of Waste Materials; to address increased costs due to uncontrollable circumstances, including, without limitation, changes in local, state or federal laws or regulations, imposition of taxes, fees or surcharges or acts of God such as floods, fires, hurricanes, natural disasters, etc. Company may also increase the charges to reflect increases in disposal and/or transportation costs and increases in the Consumer Price Index for the municipal or regional area in which the Service Address is located. Increases in charges for reasons other than as provided above require the consent of Customer which may be received verbally, in writing, by payment of the invoice or by the actions and practices of the parties. Company reserves the right to charge an additional fee if the following additional services are provided to Customer: Enclosure Charge, Services on High Demand Days, Pull/Push Out Services, Container Relocation Fee, or Seasonal Restart Fee. Company reserves the right to charge a fee no greater than that allowed by law on all Customer checks returned for insufficient funds.

5. **CHANGES.** Changes in the frequency of collection service, schedule, number, capacity and/or type of equipment may be agreed to orally, in writing, or by the actions and practices of the parties. If Customer changes its service address during the term of this Agreement, this Agreement shall remain valid and enforceable with respect to services rendered at Customer's new service location if such location is within Company's service area.

6. **EQUIPMENT, ACCESS.** All equipment furnished by Company shall remain the property of Company; however, Customer shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss or damage to the equipment and for its contents while at Customer's location. Customer shall not overload, move or alter the equipment and shall use the equipment only for its intended purpose. At the termination of this Agreement, Customer shall return the equipment to Company in the condition in which it was provided, normal wear and tear excepted. Customer shall provide unobstructed access to the equipment on the scheduled collection day. Customer shall pay, if charged by Company, an additional fee for any service modifications caused by or resulting from Customer's failure to provide access.

Company shall not be responsible for any damage to Customer's property, including pavement, subsurface or curbing, resulting from Company's provision of services hereunder. Customer warrants that Customer's right of way is sufficient to bear the weight of Company's equipment and vehicles.

7. **LIQUIDATED DAMAGES.** In the event Customer terminates this Agreement prior to the expiration of any term for any reason other than a default by Company, or in the event Company terminates this Agreement for Customer's default, Customer shall pay the following liquidated damages in addition to the Company's legal fees: 1) if the remaining Initial Term under this Agreement is six or more months, Customer shall pay its most recent monthly charges multiplied by six; 2) if the remaining Initial Term under this Agreement is less than six months, Customer shall pay its most recent monthly charges multiplied by the number of months remaining in the Term; 3) if the remaining Renewal Term under this Agreement is three or more months, Customer shall pay its most recent monthly charges multiplied by three; or 4) if the remaining Renewal Term under this Agreement is less than three months, Customer shall pay its most recent monthly charges multiplied by the number of months remaining in the Renewal Term. Customer acknowledges that the actual damage to Company in the event of termination is difficult to fix or prove, and the foregoing liquidated damages amount is reasonable and commensurate with the anticipated loss to Company resulting from such termination and is an agreed upon fee and is not imposed as a penalty. Company shall not be liable under any circumstances for any special, incidental or consequential damages arising out of or in connection with performance of this Agreement. Customer shall pay liquidated damages of \$100 for every Customer waste tire that is found at the disposal facility.

8. **INDEMNITY.** The Company agrees to indemnify, defend and save Customer harmless from and against any and all liability which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by any negligent act, negligent omission or willful misconduct of the Company or its employees, which occurs (1) during the collection or transportation of Customer's Waste Materials, or (2) as a result of the disposal of Customer's Waste Materials, after the date of this Agreement, in a facility owned by a subsidiary of Waste Management, Inc., provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials.

Customer agrees to indemnify, defend and save the Company harmless from and against any and all liability which the Company may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by Customer's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Customer or its employees, agents or contractors in the performance of this Agreement or Customer's use, operation or possession of any equipment furnished by the Company. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance of this Agreement.

9. **RIGHT OF FIRST REFUSAL.** Customer grants to Company a right of first refusal to match any offer relating to services similar to those provided hereunder which Customer receives (or intends to make) upon termination of this Agreement for any reason and Customer shall give Company prompt written notice of any such offer and a reasonable opportunity to respond to it.

10. **MISCELLANEOUS.** (a) Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events or significant threats of events beyond its reasonable control, whether or not foreseeable, including, but not limited to, strikes, labor trouble, riots, imposition of laws or governmental orders, fires, acts of war or terrorism, acts of God, and the inability to obtain equipment, and the affected party shall be excused from performance during the occurrence of such events; (b) This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns; (c) This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, whether written or oral, that may exist between the parties; (d) This Agreement shall be construed in accordance with the law of the state in which the services are provided; and (e) All written notification to Company required by this Agreement shall be by Certified Mail, Return Receipt Requested. If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be severed from and shall not affect the remainder of this Agreement; however, the parties shall amend this Agreement to give effect, to the maximum extent allowed, to the intent and meaning of the severed provision. In the event the Company successfully enforces its rights against Customer hereunder, the Customer shall be required to pay the Company's attorneys' fees and court costs.

Customer Acknowledgement of Terms & Conditions

Signature \_\_\_\_\_  
LSABW-Green Bay version:08/06



Veolia Environmental Services  
5509 Fuller St.  
Schofield, WI 54476  
715-359-6637 Phone - 715-359-2123 Fax  
www.VeoliaES.com

# CUSTOMER SERVICE AGREEMENT

## CUSTOMER BILLING DETAILS

Customer Name:                       
Contact:                       
Tel: 715-           Ext.            Fax:             
Address:                       
City:            State: WI Zip:             
Email:                       
Multiple Service Locations? ☒ No ☐ Yes  
If Yes: ☐ Separate Invoice (each site) ☐ One Invoice  
Purchase Order #:                     

## ACCOUNT DETAILS

Location Code:            Account #:            Site #:             
Equipment Delivery (Effective Date):             
Billing Start Date:             
Name (if different):             
Contact:             
Tel:            Ext.            Fax:             
Address:             
City:            State:            Zip:            SIC #:           

## SITE SERVICE DETAILS

## SERVICE DETAILS

Transaction Description (enter change reason code):            New Account            Change            Increase            Decrease            Cancel            Renew            Other             
New Service (select type of service and waste = X) [compactor "Comp" enter customer-owned = C Veolia-owned = V]           

FL	RL	RO	RES	COMP	TRASH	OCC	REC	OTHER	Qty	Site (yd)	Frequency	S	M	T	W	TH	F	S	Monthly	Rent	Delivery	Haul	Disposal (ton)	Extra
1									1															
2									1															
3									1															
4									1															

## TERMS AND CONDITIONS ARE ON PAGE 2

This is a legal binding contract. The undersigned acknowledges that he/she has read and understands the terms and conditions as set forth on page 2 and that he/she has the authority to sign on behalf of the customer.

Customer:                     

Authorized Signature:                     

Print Name:                     

Title:                     

Contractor: Veolia Environmental Services - Midwest, LLC

Date: 9/27/2007

Representative:                     

Title: Account Manager

Date: 9/27/2007

## ADDITIONAL INFORMATION

Roll-off services outlined may have certain per load minimum or maximum weight limits as indicated:  
☐ Service includes a minimum of            tons per haul  
☐ Service includes a maximum of            tons per haul; additional tons are charged \$            /ton

Comments: Compactor hauled every 3rd week.



**CONTRACTOR'S DUTIES.** Contractor agrees to furnish the soda waste collection, disposal and/or recycling services and equipment specified pursuant to the terms hereof.

**EQUIPMENT USE AND OPERATION.** A. All contracts and equipment owned and financed by Contractor for Customer's use hereunder shall reside in the possession and control of Customer, remain the property of Contractor and Customer, except a separate written Incentive, shall have no ownership rights to such equipment.

It is understood that the equipment shall be used for the proper purposes for which it is intended and that no excessive use of equipment or more any alterations or improvements to the equipment. Contract shall be liable to Contractor for loss or damage to the equipment in excess of the cost of replacement. The Contractor shall be responsible for the safe use of the equipment and shall be liable for any loss or damage to the equipment or any other equipment or materials used in connection with the work.

c. Customer agrees to indemnify, defend and hold harmless Contractor its employees and agents against all claims, damages, suing penalties, fines and any other liability for injury or death to persons or loss or damage to property or the environment ("Damages") arising out of or from the use of the equipment by Contractor or its employees and agents in the performance of the work under this Agreement, including but not limited to the Customer's use, operation or possession of the equipment. Customer shall maintain the equipment and surrounding area in a clean and safe condition to enable Contractor to service the equipment safely and efficiently.

**COLLECTIONS.** A. On collection day(s) Customer shall provide unobstructed access to the equipment. If the equipment is inaccessible, Contractor will attempt to notify Customer by telephone. Contractor shall be released from complete liability said collection and any additional collection service or attempts to provide such service shall be charged as a "extra ride-out," subject to a surcharge up to double the otherwise applicable rate. Not the purposes of this provision, unavailability shall include (without limitation) Contractor's inability to make a collection because of parked vehicles, loaded moving trucks or trailers, snow/ice, floodwaters or other circumstances or obstructions.

Contractor will perform the collection as soon as reasonably possible and practical.

**TERM.** Customer agrees that Contractor shall have the exclusive right to collection and disposal of Customer's waste material and recyclable material pursuant to this agreement for an initial term of 3 years from the Effective Date and for any and all renewal terms hereunder. The representations, warranties and indemnifications herein shall survive any termination thereof.

**NOTICE OF TERMINATION/RENEWAL.** Except where prohibited by law, this Agreement shall be automatically renewed for successive 3 year terms unless Customer or Contractor gives written notice of termination by Certified Mail to the other at least 90 (90) days prior to contract term expiration. If 90 days prior to the termination of the initial term or any renewal term then in effect. To be effective, termination notice must be given directly by the Customer or Contractor to the other and not by third party (such as attorney, including without limitation) a competent service provider of Contractor. At the time of the execution of this Agreement, the Customer has an existing agreement with a computer service provider, the effective date of this Agreement shall be the first renewal date of the existing agreement, and Contractor agrees to give proper notice of termination of such agreement.

**➤ RIGHT TO COMPETE.** Customers granted in Contractor the right to compete with any offer which Customer reserves (or intends to make or accept) relating to any services under this Agreement upon any termination hereof, and agrees to give Contractor written notice of any such offer and a reasonable opportunity to respond to it.

**EARLY TERMINATION BY CUSTOMER.** If Customer terminates this Agreement other than as provided above, Customer shall pay to Contractor, as liquidated damages, an amount equal to fifty percent (50%) of the Average Monthly Charge multiplied by the number of months remaining in the term. The Average Monthly Charge is (a) the average of all charges for the last (6) months preceding termination, or (b) if terminated less than six (6) months into the term, the average of all charges since the Effective Date; or (c) if terminated before any charges, the billing rate. The sale of Customer's business assets and a resulting termination of this Agreement shall be deemed an "Early Termination" hereunder. Customer acknowledges that these liquidated damages are not a penalty, but a reasonable and good faith forecast of just compensation to the Contractor for damages that may otherwise be difficult to estimate and that result from Customer's breach of this Agreement.

**WASTE MATERIAL.** A. Customer represents and warrants that the waste material to be collected and transported by Contractor pursuant to this Agreement is solid waste, as defined by applicable laws and regulations, generated by Customer ("Waste Material"), and will not contain Special Waste, such as industrial process wastes, material conditioning residues, petroleum contaminated soils, resins, dechlorinated wastes, and demolition debris, unless Contractor has completed a Waste Special Waste Profile Sheet for any Special Wastes which is approved by Contractor in writing prior to collection. Waste Material and Special Wastes specifically exclude, and Customer agrees not to render, deposit or permit the deposit for Contractor's collection of, any radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance, or other material, as defined by characteristics for listed materials.

## TERMS AND CONDITIONS

applicable federal, state, or local law or regulations, or Special Waste not pre-processed in writing by Contractor (collectively, "Excluded Material"). Contractor retains all title to and liability for Excluded Material.

B. Customer must, at its expense, provide any required chemical characterization of the waste to be collected and transported by Contractor. Customers shall notify Contractor, in advance, of any changes in the characteristics or consistency of the waste or the waste generation practices with respect to the waste streams collected and transported by Contractor hereunder.

Contractor may inspect, modify and/or return to Customer, any Excluded Material. Customer shall bear full responsibility and pay all expenses and costs incurred (including, but not limited to removal, disassembly, transportation, immediate, proper treatment and disposal, and any fines and penalties) with respect to such Excluded Material and any other material concerning the above, whether from the transfer and/or disposal facility(ies), the Customer's property, third party property or equipment or Contractor for its containedly vehicles or equipment.

D. Customer will be solely responsible for complying with applicable law mandating source separation or the recycling of any waste stream.

**CHARGES, PAYMENT, ADJUSTMENTS.** Contractor shall pay Contractor within ten (10) days of invoice receipt for the services provided by Contractor (including all charges for collection, transportation, disposal, equipment use and maintenance) in accordance with the Schedule of Charges shown. Customer agrees to pay Contractor for any extra work not properly placed in the container or for material that falls from the container during dumping as a result of improper placement or consolidation of the materials at the extra yard/pickup rate then in effect. Containerized materials will be charged at a flat extra yard/pickup rate then in effect. A service charge of 1.5% per month, or the maximum allowed by law, shall be applied on past due payments. Contractor may suspend service or remove the equipment if payment is late or in the event of any other breach by Customer, without prejudice to any of Contractor's other rights and such suspension or removal shall not constitute termination of this Agreement unless Contractor so states. Contractor may increase charges to reflect the increased costs of providing services to Customer (including increases in disposal fees, environmental compliance fees or transportation costs) due to changes in the characteristics or composition of Customer's WMS, due to unannounced circumstances, including (without limitation) changes in local, state or federal law or regulation, governmental imposition of taxes, fees or surcharges, and resulting from such as Civil, state/local, hurricanes and fires. Annually, the Contractor may also adjust the rates to reflect the prevailing increase in the U.S. City Average Consumer Price Index for All Urban Consumers (CPI-U), published by the U.S. Department of Labor, Bureau of Labor Statistics. Contractor may add the rates thereafter to any amount in excess of the foregoing with Customer's approval upon thirty (30) days prior notice. Changes in rates, equipment, and frequency of service may be agreed to orally or in writing and shall be deemed valid only if the practices and actions of the parties, including payment,

**INVENTORIES/DAMAGE/OVERWEIGHT CONTAINMENTS.** Contractor shall not be responsible for damage to any equipment or accompanying substructure of any drilling rigs, such as parking lot or other noise reduction necessary to perform the service herein contracted. Customer shall place all waste material banded from the provided containers, and shall not method containers received by Contractor. If Contractor is assessed an overweight fine as a result of transporting a container, such fine shall be paid or reimbursed by Customer.

**FORCE MAJEURE** Except for payment of services rendered, to the extent that either party is precluded from performing its obligations hereunder as the result of acts of God, authority of law, strikes, lockouts, labor disputes, riots or other causes beyond its control, such nonperforming party shall be excused to the extent that its performance continues to be precluded by such causes.

**ASSIGNMENT/PENDING EFFECT.** Customer may not assign its rights and/or obligations under this Agreement without the prior written consent of Contractor. This Agreement is a legally binding contract on the part of Contractor and Customer and their respective heirs, representatives, successors and assigns. This Agreement shall apply to changes in service address location(s) or additional service location(s) of Customers within the area in which Contractor provides scheduled service.

**LIMITATION ON LIABILITY.** The parties shall not be liable for any indirect, incidental or consequential damages. Contractor's liability, if any, arising out of this Agreement shall not exceed the aggregate fee paid to Contractor by Customer, regardless of whether recovery is sought in contract, tort, statute or otherwise.

**MISCELLANEOUS.** As to conflict between terms hereof which are printed and those which are typed or written, large type shall govern. As to conflict between this Agreement and the printed terms of a Customer's agreement to which this Agreement may be attached or incorporated, the terms of this Agreement shall control. In the event of a breach of this Agreement, including Customer's failure to pay liquidated damages for Early Termination as authorized, the breaching party shall pay all reasonable attorney's fees, collection fees and costs of the other party incident to any action brought to remedy a default or enforce the terms of this Agreement. Each party hereby waives its right to a trial by jury with respect to any litigation resulting from a breach or enforcement hereof. There are no third party beneficiaries of this Agreement. This Agreement, together with any documents referred to herein, sets forth the entire agreement of the parties hereto. Any oral modification of this Agreement shall be deemed null and void and shall not invalidate or render unenforceable this Agreement or any other provision, as such, the parties hereby authorize a court of competent jurisdiction to "blue pencil" any legally non-conforming provision to render it legally conforming under relevant law for the remainder of the term of this Agreement.

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## SERVICE AGREEMENT TERMS AND CONDITIONS

recycling services and equipment

Contractor for Customer's use  
equipment, except as expressly set

and the equipment or make any  
to the equipment in excess of

costs, damages, suits, penalties,  
it ("Damages") arising out of  
of the equipment. Customer  
the equipment safely and

If the equipment is inaccessible,  
collection and any additional  
up to double the otherwise  
inability to make a collection  
instructions.

or causes beyond Contractor's  
and unless otherwise excused,  
excused from said collection.

or waste material and recyclable  
renewal terms hereunder. The

be automatically renewed for  
to the other at least sixty (60)  
renewal term then in effect. To be  
or through any third person or  
action of this Agreement, the  
all be the last renewal due of

Contractor receives (or intends to  
Contractor written notice of

provided above, Customer shall  
age multiplied by the number  
months preceding termination;  
or (c) if terminated before any  
it shall be deemed an "Early  
able and good faith forecast of  
from Customer's breach of this

and transported by Contractor  
it ("Waste Material"), and will  
contaminated soils, treated  
Sheet for any Special Waste  
excludes, and Customer agrees  
flammable, explosive, biomedical,  
y, characterized or listed under

applicable federal, state, or local law or regulations, or Special Waste not pre-approved in writing by Contractor (collectively, "Excluded Material"). Customer retains all title to and liability for Excluded Material.

B. Customer shall, at its expense, provide any requested chemical characterization of the waste to be collected and transported by Contractor. Customer shall notify Contractor, in advance, of any changes in the characteristics or consistency of the waste or the waste generation process with respect to the waste streams collected and transported by Contractor hereunder.

C. Contractor may reject, render and/or return to Customer, at Customer's expense, any Excluded Material. Customer shall bear full responsibility and pay all expenses and costs incurred (including but not limited to removal, decontamination, transportation, remediation, proper treatment and disposal, and any fines and penalties) with respect to such Excluded Material and any other material contaminated therewith, whether from the transfer and/or disposal facility(ies), the Customer's property, third party property or equipment or Contractor's (or its contractor's) vehicles or equipment.

D. Customer shall be solely responsible for complying with applicable law mandating source separation or the recycling of any waste stream.

**CHARGES; PAYMENT; ADJUSTMENTS.** Customer shall pay Contractor within ten (10) days of invoice receipt for the services provided by Contractor (including all charges for collection, transportation, disposal, equipment use and maintenance) in accordance with the Schedule of Charges shown. Customer agrees to pay Contractor for any extra waste not properly placed in the container or for material that falls from the container during dumping as a result of improper placement or overloading of the container, at the extra yardage/pick-up rate then in effect. Contaminated recyclables will be disposed of at the extra yardage/pick-up rate then in effect. A service charge of 1.5% per month, or the maximum allowed by law, if less, will be applied on past due balances. Contractor may suspend service or remove the equipment if payment is late or in the event of any other breach by Customer, without prejudice to any of Contractor's other rights, and such suspension or removal shall not constitute termination of this Agreement unless Contractor so elects. Contractor may increase charges to offset the increased costs of providing services to Customer including increases in disposal, fuel, environmental compliance fees or transportation costs due to changes in the characteristics or composition of Customer's Waste, due to uncontrollable circumstances, including (without limitation) changes in local, state or federal law or regulation, governmental imposition of taxes, fees or surcharges, and resulting from acts of God, such as floods, hurricanes and fires. Annually, the Contractor may also adjust the rates to reflect the percentage increase in the U.S. City Average Consumer Price Index for All Urban Consumers (CPI-U), published by the U.S. Department of Labor, Bureau of Labor Statistics. Contractor may adjust the rates hereunder in any amount in excess of the foregoing with Customer's approval upon thirty (30) days prior notice. Changes in rates, equipment, and frequency of service may be agreed to orally or in writing and shall be deemed evidenced by the practices and actions of the parties, including payment.

**PAVEMENT DAMAGE/OVERWEIGHT CONTAINERS.** Contractor shall not be responsible for damage to any pavement or accompanying sub-surface of any driveway, curb, parking lot or other route reasonably necessary to perform the services herein contracted. Customer shall place all waste material hereunder into the provided container(s), and shall not overload containers serviced by Contractor. If Contractor is assessed an overweight fine as a result of transporting a container, such fine shall be paid or reimbursed by Customer.

**FORCE MAJEURE.** Except for payments of services rendered, to the extent that either party is precluded from performing its obligations hereunder as the result of acts of God, authority of laws, strikes, lockouts, labor disputes, riots or other causes beyond its control, such nonperforming party shall be excused to the extent that its performance continues to be precluded by such causes.

**ASSIGNMENT/BINDING EFFECT.** Customer may not assign its rights and/or obligations under this Agreement without the prior written consent of Contractor. This Agreement is a legally binding contract on the part of Contractor and Customer and their respective heirs, representatives, successors and assigns. This Agreement shall apply to changes in service address location(s) or additional service location(s) of Customer within the area in which Contractor provides collection service.

**LIMITATION ON LIABILITY.** The parties shall not be liable for any indirect, incidental or consequential damages. Contractor's aggregate liability, if any, arising out of this Agreement shall not exceed the aggregate fees paid to Contractor by Customer, regardless of whether recovery is sought in contract, tort, statute or otherwise.

**MISCELLANEOUS.** As to conflicts between terms hereof which are printed and those which are typed or written, the typed or written language shall govern. As to conflicts between this Agreement and the preprinted terms of a Customer's agreement to which this Agreement may be attached or incorporated, the terms of this Agreement shall control. In the event of a breach of this Agreement, including Customer's failure to pay liquidated damages for Early Termination as aforesaid, the breaching party shall pay all reasonable attorney's fees, collection fees and costs of the other party incident to any action brought to remedy a default or enforce the terms of this Agreement. Each party hereby waives its right to a trial by jury with respect to any litigation resulting from a breach or enforcement hereof. There are no third party beneficiaries of this Agreement. This Agreement, together with any documents referred to herein, sets forth the entire agreement of the parties hereon. Any invalid provision of this Agreement shall be deemed stricken and shall not invalidate or render unenforceable this Agreement or any other provision; as such the parties hereby authorize a court of competent jurisdiction to "blue pencil" any legally non-conforming provision to render it legally conforming under relevant law for the remainder of the term of this Agreement.





## Wisconsin Manufacturers & Commerce

### Memo

TO: Senate Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection Committee

FROM: James Buchen, Vice President, Government Relations

DATE: December 12, 2007

RE: Opposition to Senate Bill 212

Wisconsin Manufacturers & Commerce opposes Senate Bill 212, which would regulate business-to-business contracts and impose an unnecessary burden on legitimate, above-board business-to-business transactions.

Contracts are used to structure a virtually limitless variety of business relationships. One size fits all legislation regulating business-to-business contracts ignores the almost unimaginable diversity of the many thousands of contracts executed in Wisconsin every day.

The bill will establish Wisconsin as an island in the stream of interstate commerce with unique regulation of business contracts. It will substantially add to the cost of doing business for companies, that in some cases, administer hundreds of thousands of business contracts nationwide.

Fundamentally, we do not believe that business needs to be protected from itself. Most business people take responsibility for the decisions they make and the contracts they sign. They don't want government intervention in one of the most fundamental aspects of business-to-business transactions – the right to contract.

Therefore, we urge you to vote **against** SB 212.





**Wisconsin Senate Committee on Small Business,  
Emergency Preparedness, Workforce Development,  
Technical Colleges and Consumer Protection**

**Wednesday, December 12, 2007**

**Senate Bill 212**

**Statement by**

**Equipment Leasing & Finance Association**

This statement outlines Equipment Leasing and Finance Association (ELFA) opposition to Senate Bill 212. ELFA is the trade association representing financial services companies and manufacturers engaged in financing the utilization and investment of/in capital goods. ELFA members are the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. Its over 750 members include independent and captive leasing and finance companies, banks, financial services corporations, broker/packagegers and investment banks, as well as service providers. Senate Bill 212 would apply to commercial equipment leases specified notice requirements adopted from landlord-tenant statutes in the consumer sector. ELFA members engage in business-to-business transactions financing equipment. Senate Bill 212 would intertwine their commercial contracts with inappropriate statutory concepts relating to real property.

Incorporating landlord-tenant doctrine applicable to residential property into commercial contracts based on the Uniform Commercial Code (UCC) is an inappropriate convergence of unrelated concepts. The resulting hybrid could pose difficult questions about specific applications to commercial transactions involving tangible personal property. Confusion is further heightened as this bill lacks a provision to clarify it would be operative to contracts entered into after the effective date. Renewal provisions have been widely used nationwide for many years without significant complaints or litigation, and UCC Article 2A, which contains detailed provisions regarding equipment leasing, does not limit or regulate their use.

Equipment leasing and finance companies together with small businesses leasing equipment should discharge their legal responsibilities in a manner reflective of marketplace realities rather than tapping into mandates imposed on the landlords of apartment buildings. This interchanging of legal concepts that are considered mutually exclusive should be avoided in part because to raise capital to invest in new leases for business purposes, lessors frequently assign or package and securitize leases to institutional investors. Many of these leases contain automatic renewal provisions. Senate Bill 212 may make their assignment more complex and also inhibit capital formation through assignments and securitization when the economy is being threatened by a potential tightening of credit. Wisconsin should not make raising capital to invest in financing lessees more complex.

Thank you for the opportunity to comment.

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# Department of Justice

FOR IMMEDIATE RELEASE  
THURSDAY, FEBRUARY 15, 1996

AT  
(202) 616-2771  
TDD (202) 514-1888

## JUSTICE DEPARTMENT PUTS AN END TO THE TWO LARGEST SOLID WASTE HAULING AND DISPOSAL COMPANIES' MONOPOLISTIC PRACTICES

WASHINGTON, D.C. --The world's two largest solid waste hauling and disposal companies--Waste Management Inc. and Browning-Ferris Industries Inc.--agreed today to end unlawful monopolistic practices after the Department of Justice charged that the companies blocked smaller trash haulers from entering markets in Georgia, Louisiana, Tennessee and Iowa.

Waste Management, with \$5.8 billion in revenues last year, and two of its subsidiaries agreed today to stop using long-term contracts with dumpster customers where the two subsidiaries have large market shares--the Savannah, Georgia and Central Louisiana areas.

Browning-Ferris, with more than \$4 billion in revenues in fiscal year 1994, and two of its subsidiaries also agreed today to stop using long-term contracts with dumpster customers where the two subsidiaries have large market shares--Memphis, Tennessee and Dubuque, Iowa.

In the proposed consent decrees filed today, the companies agreed to settle antitrust complaints by modifying their contracting practices in those four markets.



"Waste Management's and Browning-Ferris' large market shares and use of long-term contracts with automatic renewal provisions locked out smaller trash haulers in these markets and allowed them to keep their market power," said Anne K. Bingaman, Assistant Attorney General in charge of the Department's Antitrust Division.

Bingaman said that the Antitrust Division is examining other industries for the type of practices challenged here and will continue to monitor developments in this industry.

The civil antitrust complaint and proposed consent decree involving Waste Management were filed today in U.S. District Court in Savannah, Georgia. The suit and proposed settlement against Browning-Ferris were filed today in U.S. District Court in Washington, D.C. Both consent decrees, if approved by the court, would settle the suits. Until approved, both companies have agreed to abide by the terms of the settlement.

The Department alleged that Waste Management of Georgia Inc., which does business as Waste Management of Savannah and Waste Management of Louisiana Inc., which does business as Waste Management of Central Louisiana had market power in the Savannah and Central Louisiana markets. The Department also alleged that Browning-Ferris Industries Inc., through its subsidiaries Browning-Ferris of Iowa Inc. and Browning Ferris Industries of Tennessee Inc., had market power in the Memphis and Dubuque markets.

Both companies used and enforced the following contract terms to maintain their market power:

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- The exclusive right to collect and dispose of all of a customer's waste.

- A three year initial term. ✓

- The automatic renewal of the contract for additional three year terms unless the customer cancels by certified mail, return receipt requested, at least 60 days from the end of any term or renewal term. ✓

- A "liquidated damages" provision that requires a customer to pay six times its prior monthly charge (or its prior monthly charge times the remaining number of months of the contract, if the remaining term is less than 6 months) to cancel the contract at any other time.

The Department also alleged that Waste Management used and enforced a "right to compete" clause that requires a customer to tell Waste Management of a competing offer and allows the companies to make a counter-offer. ✓

In addition, the Department alleged that the appearance of the contracts enhanced Waste Management's and Browning-Ferris' ability to use them to maintain their market power. The contracts are not labeled "Contract," and the terms that restrict a customer's ability to switch from both defendants to a competitor are in small print on the back of the contracts.

★ The settlements require Waste Management and Browning-Ferris to eliminate these terms from contracts in use in the Savannah, Central Louisiana, Memphis and Dubuque markets where their subsidiaries have large market shares and they can be used to harm competition.



In particular, the settlements prohibit the companies from using any contract with dumpster customers in the Savannah, Central Louisiana, Memphis and Dubuque markets that:

- Have an initial term longer than two years (unless a longer term is requested by the customer and other conditions are met).

- Have any renewal term longer than one year.

- Requires the customer give notice of termination more than 30 days prior to the end of a term.

- Requires the customer to pay liquidated damages over three times the greater of its prior monthly charge or its average monthly charge during the first year it is a customer of Waste Management and Browning-Ferris, or over two times the greater of its prior monthly charge or its average monthly charge thereafter.

- Is not labeled "Service Contract" in the case of Waste Management or "Contract for Solid Waste Services" in the case of Browning-Ferris and is not easily readable.

- Requires a customer to give Waste Management and Browning-Ferris the right to provide hauling services for all solid wastes and recyclables, unless the customer affirmatively indicates that is its desire.

Waste Management is also prohibited from requiring the customer to give it notice of any offer by a competitor or requires the customer to give it the right to respond to such an offer.



The settlements also require that Waste Management and Browning-Ferris notify customers in the four relevant markets of these changes and prohibits the companies from enforcing terms in existing contracts that are inconsistent with the settlement in those markets.

The proposed consent decrees conclude the Antitrust Division's investigations of Waste Management and Browning-Ferris.

The settlements are effective immediately and will be in effect for ten years.

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96-049



# ■ publisher's note

## Trash wars

**T**his week's cover story by Pat Peckham is the classic David versus Goliath story. And it's not the first time people have made a fuss over big-time garbage haulers putting the squeeze on the little guys. Back in 1997, *City Pages* ran an investigative piece tracking the not-so-clean history of Waste Management, Wisconsin's largest company in the trash business. At the time State Sen. Russ Decker of Weston also was leading a charge for a state-wide investigation into the alleged strong arm tactics of the entire waste hauling industry. Ironically, folks from Lloyd Brothers Trucking — which was bought by Superior and then by Onyx — at that time used the story to warn local folks about Waste Management, which was entering the Central Wisconsin market. Today, what was locally owned Lloyd Brothers is now owned by a multi-national company. Onyx isn't being accused of anything unlawful, as Waste Management has been. But apparently the bigger you are, the tougher you get.

**LAST WEEK'S HEADACHE** — Our apologies for the mix-up in last week's issue on page 8. As some of you noticed, that page didn't make sense. That's because our printer, unbeknownst to us, inserted the *previous* week's page 8. How or why, we don't know. All we know is that by the time we caught the mistake, the papers were already being delivered. We reprinted about half the total run and redistributed where we could later that day, but many readers got imperfect copies. If you were one of those, please check out our website at [thecitypages.com](http://thecitypages.com) for the story that you should have seen. I hate it when stuff like this happens. ■

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# GARBAGE is serious business

Esther Martin and her new customers are finding out it's not easy to end a relationship with a big-time corporation.

**G**arbage is a big deal. We all make it, we all need to get rid of it. Until recently in the Wausau area, this business was more neighborly. As little as five years ago, the field was almost entirely locally owned hauling companies competing over not only municipal contracts, but also for individual businesses.

Things have changed. With bigger companies moving in or buying out the local guys, business practices can become more hard-bitten. It's now to the point where one internationally-owned trash-hauling outfit is so intent on keeping its businesses that the corporation is trying to recover damages from a small church that cancelled its contract to save money with a locally owned hauler.

Jeannie Seim, the administrative assistant at St. Agnes Parish in Weston, says Onyx Waste Services representatives visited her two or three times after she told Onyx that, when the current contract ended, St. Agnes was switching to Industrial Recyclers of Wisconsin (IROW) to cut costs.

Onyx had added an energy surcharge to their bills, which fluctuated, usually pushing the church's total to between \$51 and \$58, according to Seim. "We never knew what we were going to be charged, so when IROW came in and said we would be

charged \$40 a month, that sounded good," she says.

That's when things got dicey. In its contract, Onyx reserves the right to match price with competitors to maintain an automatic contract renewal. After Onyx received the church's cancellation notice, a salesman came with an offer to match the price, which, if accepted, would have effectively renewed the contract for another three years.

But Seim figured it was too late. Besides, as a parish not swimming in money, St. Agnes has an affinity for small businesses over international corporations. With the support of her priest, Seim stood her ground. Now Onyx is challenging the legality of the church's cancellation notice and is seeking liquidated damages.

"They want somewhere in the neighborhood of \$1,000," Seim says. "We're a small, struggling parish and if we can save \$10 to \$15 a month, we're going to do it."

Seim says St. Agnes has no intention of paying the damages. Onyx is claiming she cancelled according to the terms of the contract, she says, and has requested a complaint form from a state consumer protection agency.

Other customers who have tried to leave Onyx for other haulers tell similar tales of high pressure tactics, repeated sales visits after cancellations and challenges by Onyx to the technical validity of some of the contract cancellations.

IROW is the little guy in this picture, trying to get a foothold in a market they say could benefit from some additional choices — especially local ones. After much hand-wringing, IROW and some of its customers decided to go public with some concerns.

**WHEN A CONSUMER** has a complaint about a business, the remedies are pretty well-known: Call the Better Business Bureau or the state Department of Agriculture, Trade and Consumer Protection.

But what does a business do when it is concerned about the practices of a competitor? If they call the Better Business Bureau, they'll be asked



Esther Martin forecasts some real competition as the City of Wausau seeks bids soon for residential trash collection.

writing. The letter then is relayed to the company about which the allegations are made, along with a noncommittal cover letter from the bureau asking for information on whether the beef was resolved or if an attempt was made at resolution. Regardless of the response, the bureau has no actual power to force a change in behavior.

If someone from the concerned business calls Consumer Protection, they'll be referred to the agency's Bureau of Business Trade Practices. That office might act if its staffers are convinced laws are being broken. But if it's a matter of attitudes or tactics of a business, it might get tossed back in the complainant's lap with advice to seek a remedy in civil court.

That's where it's at with a simmering competition between two of the area garbage-haulers.

IROW is owned by a Mosinee couple, Cory and Becky Tomeczyk. They have a plant in Mosinee and a building in Wausau. With some of the push coming from Esther Martin, their sales and marketing person, the Tomeczyks want to branch out beyond recycling and do more hauling of refuse bound for the landfill.

They're running smack up against Onyx Waste Services, a giant in the solid waste business owned by a parent company, Vivendi Environment. Vivendi is based in France and boasts on its website that it has

Onyx currently holds the hauling contract with the City of Wausau, after acquiring Superior Waste Services, which had bought Lloyd Brothers Trucking, the local company that held the original contract.

Local Onyx manager Lenney Neeley declined to be interviewed for this story but sent a written statement: "Onyx values its relationships with its customers and resists all competitor efforts that interfere with those relationships. We have attempted to resolve this matter amicably. We would decline any further comment while we consider our further options."

To Martin and several businesses in the area, Onyx is playing hardball in a community accustomed to companies that ordinarily let unhappy customers out of a contract, especially if the original agreement has expired.

Onyx locks customers into three- to five-year contracts that can automatically renew for another three to five years. It's tricky to get out of that renewal. Onyx insists on signed cancellations from the company, delivered by certified mail no more than 120 days and not less than 60 days in advance of the expiration date.

As a professional courtesy, IROW mailed some cancellation notices on behalf of — and with permission of — businesses that wanted to leave Onyx. According to Martin, this is a common business practice. But that's when the fun began.



Jeannie Seim of St. Agnes Parish: When the church opted to leave Onyx, the company refused.



The notices went out by certified mail early in the allowable window of dates. Onyx denied receiving the first mailing, Martin says, so she mailed a second set of notices, this time sending one set to Onyx's office in Weston and additional sets to Onyx's offices in Milwaukee and Chicago.

Then Onyx was temporarily mum, Martin says, letting the time window go by before responding that the cancellations were improper for a variety of reasons, chief among them that they had been sent by IROW, not directly from the customer. IROW is not a party to the contracts.

Operators of the businesses for whom the cancellations were mailed — including St. Agnes — were willing to vouch for their intentions to leave Onyx. It didn't matter. Onyx sales people and managers told them they'd missed the opportunity to cancel. Those contracts therefore had renewed automatically for three to five years.

Some of the customers who wanted to jump off Onyx's ship didn't buy that argument. They told the company flatly that they considered the cancellations valid and had signed up with the locally owned IROW. Onyx then told them their failure to honor the contract would make them liable for li-

gated damages. Onyx went after some customers for up to \$5,000 in damages.

One of those is Marathon Town and Country. Onyx is pursuing this retail store on Wausau's north side for more than \$2,000 in damages in connection with the store's cancellation of a contract with Onyx in January.

Norm Miller, the current store manager, is not happy about the difficulties of simply opting to not renew the contract. He says there was a management change at Marathon Town and Country, so when he decided to sign up with IROW, he couldn't locate the company's contract with Onyx (originally made with Superior). His recollection was that it was a three-year contract signed in 2001 and due to expire in January of 2004. He says when he asked Onyx for contract details, he was told the contract wasn't signed until 2002 and it was for five years, not three, putting the expiration date at 2007. He says Onyx also told him the rollover date on the contract was 11/18, which if it was for three years would have meant it had already automatically renewed.

But when Miller found the contract, it was a three-year agreement signed 11/18 of 2001. He therefore believes he gave proper notice of his desire to cancel and an-

IROW truck is now emptying his dumpster. (Onyx's Neeley did respond to this, calling the date mix-up an error, not any intention to mislead the customer.)

Still, Onyx then billed Marathon Town and Country for \$2,400 to \$2,500 for damages, claiming the cancellation notice wasn't done according to contract requirements — Miller had had IROW notify Onyx of the cancellation.

Onyx also got tough with IROW, threatening to pursue legal action and damages for "tortious interference" over the contract renewal between Onyx and Marathon Town and Country. In a letter to IROW, Onyx's corporate counsel also warns of legal action if IROW makes any further attempt to get the store's business.

Martin says it's bizarre that Onyx would think it could intimidate competitors into not even making sales calls on a business contracted with Onyx.

Miller believes Onyx is shooting itself in the foot. Business managers get together and talk to each other, he says, and a story about being tied into a contract against one's will would spread quickly. "Nobody ever wants to deal with somebody like that again," Miller says. "I told the manager (of Onyx) I wouldn't want to be in your shoes."

Regardless of how the business was treated in regard to the contract, Miller said his bills were getting too large too fast. When he signed up with Onyx in 2001, he paid \$37. By May of the following year, his charges had nearly tripled and one of his bills since then was as high as \$147. The latest offer from Onyx is a rate of \$80 a month, Miller says. "They've got a good thing going for them," he says facetiously about Onyx. "It's almost impossible for the competition to get in and get their business."

It's not just IROW and its new customers who are bothered by Onyx's tactics. Bill Marcis of Marcis Signs in Wausau canceled his contract with Onyx and is having Deluxe Disposal haul his company's refuse. Deluxe offered Marcis a savings more than a year earlier, but Onyx refused to let him out of the contract or match the price until the contract expired, Marcis says.

Annoyed by the attitude, Marcis had tacked the contract up on his bulletin board so he wouldn't forget to cancel in the allowed time window. "The whole thing just irritated me," he says. "We should be doing business locally."

## MUNICIPAL CONTRACTS ARE THE BIG DEALS

IROW began doing recycling and shredding of confidential documents exclusively, but is branching into waste hauling. IROW started hauling waste from the town of Maine collection site and now has the contract for the entire town.

IROW has made some other inroads by getting the business of new commercial customers and now has about 125 under one-year contracts. IROW had 47 Wausau-area businesses ready to switch at the first of the year, but Onyx convinced about 10 of them to renege, despite fresh contracts with IROW. "We let them go," Martin says. "We let them make the choice. We never held our contract over their heads."

After hearing stories from customers about how Onyx operates, Martin is more convinced that IROW's more easygoing approach will get them further over the long haul. The only contracts they have that are for more than a year's duration are at the customer's request. Any contracted customer can cancel with 30 days notice.

If Onyx will have its sales people push so hard to try to keep a contract worth less than \$500 a year, Martin forecasts some real competition as the City of Wausau seeks bids for residential trash collection in the whole city. Onyx now holds a five-year city contract given without competitive bidding to Lloyd Brothers Trucking.

Locally owned at the time, Lloyd Brothers Trucking has since been purchased by Superior Waste Services and then by Onyx. The Wausau contract expires at the end of 2004 and Mayor Linda Lawrence plans to open it to competitive bidding. The bidding process is expected to begin soon so smaller firms could acquire needed equipment.

Small haulers can sometimes snatch away a contract from a larger outfit. Wittenberg Disposal, for example, was a one-man, one-truck operation when it was awarded the contract for all of Portage County. Wittenberg Disposal was given a year to prepare to serve the extensive area and recently landed the contract for the Village of Kronenwetter in Marathon County.

Onyx also has the contracts for the towns of Wausau and Ringle. Deluxe

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